

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos.: <b>11-O-19631 (11-O-19662;</b>
	)	<b>12-O-11587)-RAH</b>
<b>LISA LYNN SCHULTZ,</b>	)	
	)	<b>DECISION AND ORDER OF</b>
<b>Member No. 182098,</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>
A Member of the State Bar.	)	

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Respondent Lisa Lynn Schultz (respondent) was charged in two client matters with (1) failing to perform with competence; (2) failing to render accounts of client funds; (3) failing to refund unearned fees; and (4) failing to cooperate in a State Bar investigation. She was also charged in a third matter with failing to promptly pay client funds on request.

Respondent failed to appear at the second day of trial, and her default was thereafter entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.<sup>1</sup>

Rule 5.85 provides the procedure to follow when an attorney fails to appear at trial after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to appear at trial and the attorney fails to have the default set aside or vacated

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<sup>1</sup> Unless otherwise indicated, all references to rules are to this source.

within 90 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.<sup>2</sup>

In the instant case, the court concludes that all of the requirements of rule 5.85 have been satisfied and, therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

### **FINDINGS AND CONCLUSIONS**

Respondent was admitted to the practice of law in California on June 4, 1996,<sup>3</sup> and has been a member of the State Bar since then.

#### **Procedural Requirements Have Been Satisfied**

On June 1, 2012, the State Bar filed and properly served the notice of disciplinary charges (NDC) on respondent by certified mail, return receipt requested, to her membership records address. The NDC notified respondent that her failure to appear at trial would result in a disbarment recommendation. (Rule 5.41.) On August 21, 2012, respondent filed her response to the NDC.

By order filed July 26, 2012, trial was set to commence on September 27, 2012, at 9:30 a.m. for an estimate of two days and would continue from day to day or as otherwise ordered by the court. The order setting the trial date was served on respondent at the address in her response to the NDC<sup>4</sup> by first-class mail, postage paid, on July 26, 2012. (Rule 5.81(A).)

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<sup>2</sup> If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

<sup>3</sup> Although the Notice of Disciplinary Charges alleges that respondent was admitted to the practice of law on June 5, 2001, this appears to be an error. The court takes judicial notice, pursuant to Evidence Code section 452, subdivision (h), of respondent's State Bar membership records which reflect that she was admitted to practice law in this state on June 4, 1996.

<sup>4</sup> This is respondent's membership records address.

Respondent appeared for trial on September 27, 2012, and filed an Ex Parte Request/Motion to Postpone Trial which was not granted by the court. The parties were ordered to return on September 28, 2012, for the second day of trial, and were further ordered to meet and confer at 9:30 a.m. prior to trial. Respondent, however, failed to appear for trial on September 28, 2012, and the State Bar was unable to make contact with respondent either by telephone or email. The court therefore ordered respondent to personally appear on October 19, 2012, at 1:30 p.m. and show cause in writing, at or before that time, as to why her response in this proceeding should not be stricken and her defaulted entered as a sanction for her failure to appear at trial in violation of the court's prior orders.

On October 19, 2012, respondent failed to appear at the order to show cause (OSC) hearing; however, her husband left a message for the court concerning a serious health matter involving respondent's father. The court filed a Minute Order that same day trailing the OSC hearing until an in-person conference on October 26, 2012, at 3:30 p.m. Respondent's written brief showing cause as to why default should not be entered was to be filed and served by facsimile transmission and by regular mail by 5:00 p.m. on October 25, 2012. The Minute Order was properly served on respondent by first-class mail on October 19, 2012.

Nevertheless, respondent failed to file a response to the OSC. As such, no hearing on the OSC was held on October 26, 2012. Finding that all of the requirements of rule 5.81(A) were satisfied, the court entered respondent's default by order filed October 29, 2012. The order notified respondent that if she did not timely move to set aside her default, the court would recommend her disbarment.<sup>5</sup> The order also placed respondent on involuntary inactive status

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<sup>5</sup> The order was properly served on respondent on October 29, 2012, by certified mail, return receipt requested, to respondent's membership records address. The return receipt reflects that the order was received by respondent.

under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and she has remained inactively enrolled since that time.

Respondent did not seek to have her default set aside or vacated. (Rule 5.83(C)(2) [attorney has 90 days after order entering default is served to file motion to set aside default].) On February 6, 2013, the State Bar filed the petition for disbarment.<sup>6</sup> As required by rule 5.85(A), the State Bar reported in the petition that: (1) respondent has not contacted the State Bar since October 29, 2012, the day her default was entered; (2) there are other disciplinary matters and investigations pending against respondent;<sup>7</sup> (3) respondent has no record of prior discipline; and (4) the Client Security Fund has not made any payments resulting from respondent's conduct. Respondent has not responded to the petition for disbarment or moved to set aside or vacate the default. The case was submitted for decision on March 5, 2013.<sup>8</sup>

### **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of a respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that

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<sup>6</sup> The petition was properly served on respondent on February 6, 2013, by certified mail, return receipt requested, addressed to respondent at her membership records address.

<sup>7</sup> The court takes judicial notice, pursuant to Evidence Code section 452, subdivision (d), that case No. 13-C-10416 was filed against respondent after the filing of the petition for disbarment in this matter.

<sup>8</sup> On March 28, 2013, respondent filed a responsive pleading in another pending disciplinary matter (case No. 12-C-13801). In this pleading, respondent sought additional time to respond to the petition for disbarment in case Nos. 11-O-19631 (11-O-19662; 12-O-11587). The court struck respondent's request as it was filed in the wrong case, and case Nos. 11-O-19631 (11-O-19662; 12-O-11587) had already been taken under submission for decision.

Respondent participated by telephone in a pretrial conference on April 25, 2013, in case No. 12-C-13801. The court set a due date of April 29, 2013, for respondent's motion for relief from default to be filed in case Nos. 11-O-19631 (11-O-19662; 12-O-11587). To date, however, respondent has not filed a motion to set aside her default in this matter.

respondent is culpable as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

**1. Case Number 11-O-19631 (Faris Matter)**

Count One – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) by failing to pursue her client’s divorce action or otherwise perform any legal services of value on her client’s behalf after September 9, 2011.

Count Two – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failing to render appropriate accounts of client funds) by failing to provide her client with an accounting of the services provided for the advanced fees paid by the client.

Count Three – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to promptly refund unearned fees) by failing to refund unearned fees to her client.

Count Four – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by failing to respond in writing to letters from the State Bar regarding a State Bar investigation.

**2. Case Number 11-O-19662 (Cano Matter)**

Count Five – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to file a response on behalf of her client and failing to take any action on her client’s behalf in a divorce action.

Count Six – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct by failing to provide her client with an accounting of the services provided for the advanced fees paid by the client.

Count Seven – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to refund unearned fees to her client.

Count Eight – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) by failing to respond in writing to a letter from the State Bar regarding a State Bar investigation.

**3. Case Number 12-O-11587 (Park Matter)**

Count Nine – Respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct (promptly pay/deliver client funds) by failing to promptly pay to her client, as requested by her client, funds she was holding on her client’s behalf.

**Disbarment is Recommended**

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied and respondent’s disbarment is recommended. In particular:

- (1) the NDC was properly served on respondent under rule 5.25;
- (2) respondent had actual notice of this proceeding and of the trial dates prior to entry of the default;
- (3) the default was properly entered under rule 5.81; and
- (4) the factual allegations in the NDC deemed admitted by the entry of the default, support a finding that respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite actual notice and opportunity, respondent failed to appear for the second day of trial in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

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## **RECOMMENDATION**

### **Disbarment**

The court recommends that respondent Lisa Lynn Schultz be disbarred from the practice of law in the State of California and that her name be stricken from the roll of attorneys.

### **Restitution**

The court also recommends that respondent be ordered to make restitution to the following payees:

(1) Irene Faris in the amount of \$1,400 plus 10 percent interest per year from July 30, 2011;<sup>9</sup> and

(2) Anthony Cano in the amount of \$1,800 plus 10 percent interest per year from April 16, 2011.

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

### **California Rules of Court, Rule 9.20**

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

### **Costs**

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

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<sup>9</sup> Although respondent's client paid respondent \$1,900 in advanced fees, the parties stipulated that respondent's client asked for a full refund less \$500.

## **ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Lisa Lynn Schultz, State Bar Number 182098, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: June \_\_\_\_\_, 2013

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RICHARD A. HONN  
Judge of the State Bar Court